

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JOHN M. KIM,

11 Plaintiff,

v.

12 HUMAN RES. DEP'T OF SOC. &  
13 HEALTH SERV.'S, STATE OF  
14 WASH.,

15 Defendant.

CASE NO. C16-1527-JCC

ORDER ON DEFENDANT'S  
MOTION TO DISMISS

16 This matter comes before the Court on Defendant Department of Social & Health  
17 Services' motion to dismiss (Dkt. No. 13). Having thoroughly considered the parties' briefing  
18 and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the  
19 motion and dismisses Plaintiff John Kim's claims without prejudice for the reasons explained  
20 herein.

21 Mr. Kim filed his complaint on September 30, 2016. (Dkt. No. 1.) He failed to timely  
22 serve the Department of Social & Health Services, and the Court extended his time to serve the  
23 Department to February 15, 2017. (Dkt. No. 8 at 1-2.) Mr. Kim attempted to serve the  
24 Department, but failed to serve the correct documents. (*See* Dkt. No. 13 at 2; Dkt. No. 14 at 5-  
25 19.) The Department filed a motion to dismiss Mr. Kim's action for failure to timely serve. (Dkt.  
26 No. 13.) In lieu of dismissal, Mr. Kim requests additional time to comport with the requirements

1 of Federal Rule of Civil Procedure 4. (Dkt. No. 16 at 2.)

2       Absent waiver, a complaint and summons must be served within 90 days after the  
3 complaint is filed. Fed. R. Civ. P. 4(c), (m). Personal service on the attorney general or an  
4 assistant attorney general is required for service on a Washington state agency. Wash. Rev. Code  
5 §§ 4.28.080, 4.92.020. If service is improperly made without good cause, the Court “must  
6 dismiss the action *without* prejudice . . . or order that service be made within a specified time.”  
7 Fed. R. Civ. P. 4(m) (emphasis added).

8       The Court has already deferred Mr. Kim’s service deadline once to February 15, 2017.  
9 (See Dkt. No. 8.) Because Mr. Kim did not properly serve the Department by that date, the Court  
10 must either dismiss the complaint or order service by a new date. Fed. R. Civ. P. 4(m). The Court  
11 is sympathetic to Mr. Kim’s difficulty navigating the Federal Rules, but prolonging Mr. Kim’s  
12 instant action does not resolve this problem. In fact, barring a statute of limitations issue, the  
13 Court gives Mr. Kim the precise relief he seeks by dismissing his complaint without prejudice.  
14 Mr. Kim now has the option to refile his action at a later date. If he chooses to do so, he must  
15 properly serve the Department as required by Federal Rules of Civil Procedure 4(c), 4(m), and  
16 Washington law. The Court thereby GRANTS the Departments’ motion and dismisses Mr.  
17 Kim’s complaint without prejudice.

18       For the foregoing reasons, Defendant’s motion to dismiss (Dkt. No. 13) is GRANTED.  
19 Mr. Kim’s complaint is DISMISSED without prejudice. Mr. Kim also requests an interpreter to  
20 aid him in future hearings. (Dkt. No. 16 at 2.) In light of the Court’s ruling on the motion to  
21 dismiss, Mr. Kim’s request is DENIED as moot.

22       //

23       //

24       //

25       //

26       //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
DATED this 5th day of May 2017.



John C. Coughenour  
UNITED STATES DISTRICT JUDGE